



April 16, 2001

Mr. Paul H. Hayers
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P.O. Drawer 391
Electra, Texas 76360-0391

OR2001-1506

Dear Mr. Hayers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146014.

The Electra Police Department (the "department"), which you represent, received a request for the police reports and records of the requestor's son for an incident that occurred on January 7, 2001. You state that you have released the offense report but that the remainder of the document is excepted from required disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). The department received the open records request on January 16, 2001. The department's request for an attorney general's decision was postmarked on February 7, 2001. Because the request for a decision was not timely received,

the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The need of a governmental body, other than the body that is seeking an open records decision, to withhold information under section 552.108 of the Government Code may be a compelling reason for non-disclosure. Open Records Decision No. 586 (1991).

Section 552.108 of the Government Code excepts information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). In this instance, the department represents that the Wichita County Criminal District Attorney's Office has requested that the information be withheld and advised that disclosure of the requested information would "seriously damage their efforts to prosecute this case." Therefore, you may withhold most of the requested information in Exhibit D pursuant to section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic information and the following information, you may withhold Exhibit D from required disclosure based on section 552.108(a)(1).

Within the responsive information provided are documents made public by section 552.022 of the Government Code. Information enumerated under section 552.022 is public information and is "not excepted from required disclosure unless [it is] expressly confidential under other law." Gov't Code § 552.022(a). Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). You raise section 552.108 of the Government Code. Section 552.108 is an exception under the Act and is not other law that makes the information filed with the court confidential. Accordingly, except for the Texas driver's license and license plate numbers, the department must release the Probable Cause Affidavit, Order Setting Bond, Affidavit for Arrest Warrant, and Warrant of Arrest.

Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the department

must withhold the driver's license and license plate numbers found within the released documents. The remaining information in the court documents must be released.

Lastly, we note that some of the responsive documents include medical records. Medical records are subject to section 159.002 of the Occupations Code, known as the Medical Practices Act ("MPA"). Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1998). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. See Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). We note that the requestor is the father of one of the persons whose MPA record is at issue. Section 159.004(5) of the MPA allows disclosure of confidential information to "a person who has the written consent of the patient or other person authorized to act on the patient's behalf." Consent for the release of confidential information must be in writing and signed by the patient or, if the patient is a minor, a parent or legal guardian of the patient. Occ. Code § 159.005(a)(1), (2). We have marked the medical records that you may release only in accordance with the MPA.

In summary, section 552.108(a)(1) permits the department to withhold most of the information in Exhibit D. The department must release the basic information. In addition, the department must release the documents filed with a court after redaction of driver's license and license plate numbers under section 552.130 of the Government Code. Medical records may not be released except in accordance with the MPA.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

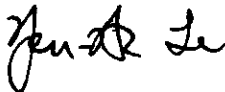
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 146014

Encl. Submitted documents

**cc: Mr. John D. Taylor
2204 Stephens Street
Vernon, Texas 76384
(w/o enclosures)**